

COMMISSION REGULATION (EC) No 1069/2007

of 17 September 2007

imposing a provisional anti-dumping duty on imports of polyvinyl alcohol (PVA) originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 19 December 2006, pursuant to Article 5 of the basic Regulation, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of polyvinyl alcohol (PVA), originating in the People's Republic of China (PRC) and Taiwan (the countries concerned).
- (2) The proceeding was initiated following a complaint lodged on 6 November 2006 by Kuraray Specialties Europe GmbH (the complainant), since January 2007 referred to as Kuraray Europe GmbH, representing a major proportion, in this case more than 25 %, of the total Community production of polyvinyl alcohol (PVA). The complaint contained prima facie evidence of dumping of PVA originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant producer and other known Community producers, exporting producers in the countries concerned, importer/traders and users known to be concerned and the representatives of the exporting countries concerned, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (4) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned as well as to the authorities of the PRC. One exporting producer in the PRC claimed MET pursuant to Article 2(7)(b) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.
- (5) In view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling for those parties was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.
- (6) However, as far as the exporting producers in the PRC are concerned, given that only three exporting producers cooperated, it was subsequently decided that sampling would not be necessary.
- (7) As concerns the importers of PVA, the Commission requested all known importers to provide information concerning imports and sales of the product concerned. On the basis of the information received from 14 cooperating importers, the Commission selected a sample of five importers, of which two were based in Germany, one in Italy, one in the Netherlands and one in the United States of America. These importers represented the largest representative volume of sales in the Community (around 80 %) of the cooperating importers, which could be reasonably investigated within the time available.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 311, 19.12.2006, p. 47.

- (8) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaire replies were received from two Community producers, three exporting producers in the PRC, one exporting producer in Taiwan, the five sampled importers and seven users in the Community.
- (9) As concerns the questionnaire replies received from users, two of those were incomplete and therefore had to be disregarded. In addition, several users submitted comments without replying to the questionnaire.
- (10) One of the sampled importers cancelled twice at a very late stage an agreed verification visit. As a consequence, the data submitted by this company could not be verified and it provisionally had to be disregarded.
- (11) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT in the case of the PRC and for a preliminary determination of dumping, resulting injury and Community interest for both countries concerned. Verification visits were carried out at the premises of the following companies:

(a) Community producers:

- Kuraray Europe GmbH, Frankfurt, Germany,
- Celanese Chemicals Ibérica S.L., Tarragona, Spain;

(b) Exporting producer in Taiwan:

- Chang Chun Petrochemical Co. Ltd., Taipei;

(c) Exporting producer in the PRC:

- Shanxi Sanwei Group Co., Ltd., Hongdong;

(d) Unrelated importers in the Community:

- Cordial Beheer en Registergoederen BV, Winschoten, the Netherlands,
- Menssing Chemiehandel & Consultants GmbH, Hamburg, Germany,
- Omya Peralta GmbH, Hamburg, Germany;

(e) Users in the Community:

- Cordial Beheer en Registergoederen BV, Winschoten, the Netherlands,
- Wacker Chemie AG, Burghausen, Germany.

- (12) In light of the need to establish a normal value for the exporting producers in the PRC which did not request MET or to which MET might not be granted, a verification to establish normal value on the basis of data from the analogue country envisaged in the notice of initiation, Japan, took place at the premises of the following producer:

- Kuraray Japan, Tokyo.

1.3. Investigation period

- (13) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the investigation period (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (14) The product concerned is certain polyvinyl alcohols (PVA) in the form of homopolymer resins with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol % originating in the People's Republic of China and Taiwan ('the product concerned'), normally declared within CN code ex 3905 30 00.

- (15) PVA is produced by the hydrolysis of polyvinyl acetate which is manufactured by the polymerisation of vinyl acetate monomer (the latter being produced from, mainly, ethylene and acetic acid). PVA has a wide variety of applications. In the Community, it is mainly used for the production of polyvinyl butyral (PVB) (25 %-29 % of consumption), polymerisation aids (21 %-25 %), paper coatings (17 %-21 %), adhesives (13 %-17 %) and for textile sizing (8 %-12 %).

- (16) One Community user claimed that a specific product it purchased from the PRC should not be considered as the product concerned, as (i) it is not a standard PVA model and has different and very specific chemical and physical characteristics; and (ii) it has different uses or applications from commodity PVA.

- (17) As concerns the first argument, it was found that this model falls within the product description as described in recital 14 and that it shares its basic physical and technical characteristics with the other models falling within the product definition. As concerns the second argument, this particular PVA model was used for the production of PVB, which is not only, as indicated in recital 15, the most important application but also the fastest growing market for PVA in the Community. It would be unrealistic to characterise such a market as not standard. Moreover, it was found that the average prices paid for PVA for the different applications were within the same range. In view of all these findings, it was considered that there were no grounds to exclude this model from the product definition and therefore the claim was dismissed.

2.2. Like product

- (18) The investigation showed that PVA produced and sold in the Community by the Community industry, PVA produced and sold on the domestic markets of Taiwan and the PRC, and PVA produced in the PRC and Taiwan and exported to the Community, as well as that produced and sold in Japan, have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (21) The Commission subsequently examined whether the domestic sales of each product type sold domestically in representative quantities could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exported product type the proportion of profitable domestic sales to independent customers during the IP.
- (22) For those product types where more than 80 % by volume of sales on the domestic market were not below unit cost and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.

3. DUMPING

3.1. Taiwan

3.1.1. Normal value

- (19) For the determination of normal value, it was first established whether domestic sales of the like product to independent customers of the sole exporting producer in Taiwan were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume of the product concerned to the Community, in accordance with Article 2(2) of the basic Regulation.
- (23) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.
- (24) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (25) Wherever domestic prices of a particular product type sold by the exporting producer could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.
- (20) For each product type sold by the exporting producer on its domestic market and found to be directly comparable with the product type sold for export to the Community, it was established whether domestic sales were sufficiently representative. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Community.
- (26) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation.

3.1.2. Export price

- (27) The sole exporting producer exported the product concerned directly to independent customers in the Community. Export prices were therefore established on the basis of the prices actually paid or payable by these independent customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.1.3. Comparison

- (28) The normal values and the export prices of the sole exporting producer were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export prices, due allowance in the form of adjustments was made for differences in transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, after sales costs (warranty and guarantee) and other factors (bank charges) where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

3.1.4. Dumping margin

- (29) The comparison of the normal values with the export prices showed a dumping margin of -2,30 % for the sole Taiwanese exporting producer, Chang Chun Petrochemical Co. Ltd., during the IP.
- (30) Considering that the sole cooperating company is the only exporting producer of the product concerned in Taiwan and that it accounts for 100 % of Taiwanese exports to the EC during the IP, it was concluded that no dumping was found for Taiwan.

3.2. People's Republic of China (PRC)

3.2.1. Market Economy Treatment (MET)

- (31) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 for those producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

- (32) One Chinese exporting producer and its related trading company requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. The producer manufactures the product concerned, while its related trading company is involved in the export sales of the product concerned. Indeed, it is the Commission's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET.

- (33) For the exporting producer and its trading company claiming MET, the Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the companies in question as deemed necessary.

- (34) The investigation revealed that MET could not be granted to the Chinese exporting producer as it did not meet criterion 1 set out in Article 2(7)(c) of the basic Regulation.

- (35) The exporting producer, as well as its related trading company, was found to be controlled by fully State-owned companies which were represented by a decisive majority of the members of the Board of Directors at a ratio which was disproportionate to their shareholding. In addition, the majority of the shares were owned ultimately by the State during the IP. As the companies concerned failed to present evidence that could be considered sufficient to remove doubts of significant State interference in management decisions, it was determined that this group of companies was under significant State control and interference. The interested parties were given an opportunity to comment on the above findings. The comments received were not of a nature to change the conclusions.

(36) On the basis of the above, the Chinese exporting producer and its related trading company have not shown that they fulfil all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

3.2.2. Individual treatment (IT)

(37) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

(38) As far as the PRC is concerned, the sole exporting producer and its related trading company, who requested MET, also claimed IT in the event that they would not be granted MET.

(39) On the basis of the information available, it was found that the exporting producer and its trading company failed to demonstrate that they cumulatively met all the requirements for IT as set forth in Article 9(5) of the basic Regulation. Namely, it was established that the exporting producer and its trading company failed to meet the criterion stipulated in Article 9(5)(c) of the basic Regulation that the majority of the shares belong to private persons and that state officials appearing on the Board of Directors or holding key management positions shall either be in the minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference, for the reasons explained in recital 35.

3.2.3. Analogue country

(40) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in an analogue country.

(41) In the notice of initiation, the Commission indicated that it envisaged using Japan as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on this. Some of the interested parties objected to this proposal and proposed the use of India or Taiwan instead.

(42) In India, there was no significant production of the like product. Taiwan was subject to the investigation and thus

data in that country might be distorted by dumping. Therefore, the parties were informed that Japan was selected as analogue country because it was not subject to the investigation, there was representative production of the like product and the conditions of competition seemed appropriate.

(43) The Commission sought cooperation from four known producers in Japan and sent the relevant questionnaire to them. Two of the four Japanese producers replied to the questionnaire. However, one of them did not submit complete data and did not accept a verification visit. The data submitted by the sole fully cooperating Japanese producer were verified on the spot.

(44) However, after the verification visit at the exporting producer in Taiwan, it was found that Taiwan was not dumping during the IP. The question of the choice of analogue country was therefore reconsidered.

(45) In this regard, it was found that the production volume in Taiwan constitutes more than 100 % of the volume of Chinese exports of the product concerned to the Community. Moreover, the Taiwanese market can be characterised as open, given that the import duty level is low (MFN duty of 5 %). The investigation also showed that there were significant domestic sales of the like product in Taiwan and that there were sufficient imports into the Taiwanese market. Therefore, Taiwan was deemed a competitive market and sufficiently representative for the determination of normal value for the PRC.

(46) In addition, imports of PVA into Taiwan represent around 15 % of domestic consumption compared to only around 3 % in the case of Japan, indicating that the Japanese market is less appropriate than Taiwan in terms of competition from imports. In view of the above, it was provisionally decided that Taiwan be used as analogue country, as it constitutes the most appropriate analogue country within the meaning of Article 2(7)(a) of the basic Regulation.

3.2.4. Normal value

(47) Following the choice of Taiwan as analogue country as indicated in recital 46, and pursuant to Article 2(7)(a) of the basic Regulation, the normal value established for Taiwan in recitals 19 to 26 was used in the dumping calculation for the PRC.

3.2.5. Export price

- (48) Since the three Chinese cooperating exporting producers accounted together for almost the totality of the exports of the product concerned to the Community during the IP, their own export data were used to establish the export price. The reliability of the information provided was nevertheless cross-checked with Eurostat import data which showed reasonable agreement.
- (49) The three cooperating exporting producers in the PRC made export sales to the Community either directly to independent customers in the Community or through their related trading companies located in the exporting country.
- (50) For all export sales, export prices were established on the basis of the prices actually paid or payable, in accordance with Article 2(8) of the basic Regulation.

3.2.6. Comparison

- (51) The normal values of the sole producer in the analogue country, Taiwan and the export prices of the three cooperating Chinese exporting producers were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export prices, due allowance in the form of adjustments was made for differences in transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and commissions where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

3.2.7. Dumping margin

- (52) In the absence of MET or IT being granted to any of the cooperating Chinese exporting producers, a countrywide dumping margin was calculated for the whole of the PRC using the weighted average of the ex-works export prices of the three cooperating exporting producers.
- (53) The comparison of the weighted average Chinese export price and the weighted average normal value of the analogue country showed a dumping margin of 10,06 %.

(KEG) in Germany, Celanese Ibérica Chemicals (Celanese) in Spain and a third producer which produces very limited volumes but did not cooperate in the investigation. KEG and Celanese fully cooperated in the investigation.

- (55) In addition to the production mentioned above, three Community producers produce the like product for captive use only. Two of these companies cooperated in the investigation as a user as they also purchased significant quantities of the product concerned for the production of their downstream products.
- (56) As the two cooperating producers mentioned in recital 54 accounted for 80 % of the total (captive and non-captive) Community production during the IP, it is considered that they account for a major proportion of the total Community production of the like product. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'.
- (57) Given that the Community industry comprises only two producers, data relating to the Community industry had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.
- (58) In order to establish whether or not the Community industry suffered injury and to determine consumption and the various economic indicators relating to the situation of the Community industry, it was examined whether and to what extent the subsequent use of the Community industry's production of the like product had to be taken into account in the analysis.
- (59) PVA is used as an intermediate material for a variety of other products. In the Community, it is often consumed in the production of polyvinyl butyral (PVB), used as an adhesive, for paper coating, as a polymerisation aid and for textile sizing. It was found in the investigation that one of the Community producers, which sold most of its own-produced PVA on the open market, also used significant volumes of its produced PVA for further downstream processing within the same company. Such situation is referred to as captive use. As explained in recital 55, three other companies in the Community produced PVA for captive use only and in addition to this production for captive use, at least two of them also purchased significant volumes of PVA on the market as a user for further downstream processing.

4. INJURY

4.1. Community production and Community industry

- (54) Within the Community, the like product is manufactured for sale by three companies: Kuraray Europe GmbH

(60) It was found that the quantities used for captive use, by the companies concerned in the Community, could in principle be substituted by purchased PVA, e.g. if market circumstances and/or financial considerations would trigger such a change. They have therefore been included in the Community market analysis.

4.2. Community consumption

(61) Community consumption was established on the basis of the free market sales volumes of the Community industry's own production on the Community market, the captive use of the Community industry, the production quantities of the other (smaller) Community producers as obtained from the most widely used database in this particular business, the captive use of the two users referred to in recital 55, the verified import volumes of the sole Taiwanese producer, and Community import volumes data concerning all other countries obtained from Eurostat.

Eurostat data

(62) Regarding the Community import volumes data obtained from Eurostat, as mentioned in recital 14, the product concerned is presently declared within CN code ex 3905 30 00. The Eurostat data concerning this ex CN code also include certain niche products not

covered by the product scope. As it was not possible to retrieve from the broader category of products the data for the product concerned only, they were therefore adjusted based on information on imports of these niche products provided in the complaint.

(63) Also with regard to the Eurostat data it is to be noted that certain imports of the product concerned were reported under 'secret extra' and, therefore, no details on origin were available in the public database. Details on the countries of origin of the imports declared as such have been acquired from the relevant customs authorities and they therefore have been included in all relevant tables and analyses.

(64) On the basis of the above, it was found that the consumption of PVA has increased strongly during the period considered and especially between 2004 and 2005. Over the period considered, the consumption increase was 14 % which was mainly due to a fast growing demand for PVA as raw material for the production of polyvinyl butyral (PVB), which is used for the production of PVB film or sheets. PVB film is used as an interlayer in the production of laminated safety glass, in automotive and architectural markets, which is a strongly growing market in the Community.

	2003	2004	2005	IP
Consumption in tonnes	142 894	148 807	163 851	163 096
Index (2003 = 100)	100	104	115	114

4.3. Imports from the countries concerned

(65) As the dumping margin found for Taiwan is below *de minimis*, imports originating in this country should be provisionally excluded from the injury assessment.

(a) Volume and market share of the imports concerned

(66) The volumes of imports of the product concerned decreased by 39 percentage points between 2003 and 2004, then increased by 29 percentage points in 2005 after which they went slightly down, resulting in a decrease of 11 % during the IP as compared to 2003.

Imports	2003	2004	2005	IP
PRC tonnes	24 067	14 710	21 561	21 513
Index (2003 = 100)	100	61	90	89

- (67) The market share held by imports from the PRC also first sharply decreased and then went up. During 2005 and the IP imports from the PRC accounted for 13 % of the whole Community market.

Market share PRC	2003	2004	2005	IP
Community market	17 %	10 %	13 %	13 %
Index (2003 = 100)	100	59	78	78

(b) *Prices*

- (68) Between 2003 and the IP, the average price of imports of the product concerned originating in the PRC decreased by two percentage points.

Unit prices	2003	2004	2005	IP
PRC (EUR/tonne)	1 150	1 115	1 164	1 132
Index (2003 = 100)	100	97	101	98

(c) *Price undercutting*

- (69) For the determination of price undercutting the price data referring to the IP were analysed. The relevant sales prices of the Community industry were net prices after deduction of discounts and rebates. Where necessary, these prices were adjusted to an ex-works level, i.e. excluding freight cost in the Community. The import prices of the PRC were also net of discounts and rebates and were adjusted where necessary to cif Community frontier with an appropriate adjustment for the customs duties (6,5 %) and post-importation costs, as incurred by importers in the Community.
- (70) The Community industry's sales prices and the import prices of the PRC were compared at the same level of trade, namely to independent customers within the Community market. As it was considered that the comparison per model had to be meaningful and fair, and, therefore, no comparison between a standard grade and a special grade falling within the product definition should be allowed, it was considered appropriate to exclude a limited number of models from the comparison. These models represented 35 % of imports from the PRC but only a very small quantity of Community industry sales on the Community market.
- (71) During the IP, the weighted average price undercutting margin thus calculated, expressed as a percentage of the Community industry's sales prices, was 3,3 % for the PRC.

4.4. **Situation of the Community industry**

- (72) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors having a bearing on the state of the Community industry during the period considered. For confidentiality reasons, given that the analysis concerns only two companies, most indicators are presented in indexed form or ranges are given.

(a) *Production, capacity and capacity utilisation*

	2003	2004	2005	IP
Production in tonnes (ranges)	60 000-80 000	65 000-85 000	70 000-90 000	75 000-95 000
Production (index)	100	103	119	126
Production capacity in tonnes (ranges)	60 000-80 000	65 000-85 000	70 000-90 000	75 000-95 000
Production capacity (index)	100	107	129	133
Capacity utilisation (index)	100	97	92	94

(73) The Community industry's production increased by 26 % during the period considered. The significant increase in production capacity, notably in 2005, was triggered by the increasing demand on the Community market.

(74) Between 2003 and the IP, additional production capacity was installed by the Community industry. During the same period, capacity utilisation decreased by 6 %.

(b) *Sales volume and market shares in the Community*

(75) The table below shows the Community industry's performance in relation to its sales to independent customers in the Community:

Community Industry	2003	2004	2005	IP
Sales volume (index)	100	110	112	122
Market share (index)	100	104	97	104

(76) Sales volumes of the Community industry to independent customers in the Community went up by 22 % from 2003 to the IP. This has to be seen in the light of an increasing consumption in the Community.

(77) The market share of the Community industry increased in 2004, then decreased sharply in 2005 and during the IP it was four percentage points higher than in 2003.

(c) *Prices in the Community*

(78) The main raw material used for the production of PVA is vinyl acetate monomer or VAM. VAM is a commodity product and, as such, prices of VAM are determined based on the balance in the market between demand and supply. Moreover, the market price of VAM is heavily influenced by the development of the oil and gas prices as the major inputs for the production of VAM are acetic acid (the production of which is natural gas intensive) and ethylene (produced from distillation of hydrocarbons). In addition, energy is also a major cost in producing PVA from VAM. The total weight of energy cost in the production of PVA subsequently amounts to 50 % to 60 % and therefore, in normal circumstances, a significant change in the oil and gas prices can be expected to have a direct impact on the PVA sales price.

- (79) It was found that world market prices of these raw materials went up significantly between 2003 and the IP. During this period VAM prices increased by 20 % to 30 % and the increase in energy prices was even much higher. However, this dramatic price evolution of the main raw materials cost was not reflected in higher sales prices of the Community industry: sales prices of the Community industry decreased during the same period by 5 %, with a particularly bad year in 2004 (-7 %). Thus, instead of passing on the overall cost increase to their customers, the Community industry had to decrease prices in order not to lose customers.

	2003	2004	2005	IP
Unit prices in EUR (ranges)	1 300-1 800	1 100-1 600	1 200-1 700	1 200-1 700
Unit prices (index)	100	93	95	95

(d) *Stocks*

- (80) The figures below represent the volumes of stocks at the end of each period.

	2003	2004	2005	IP
Stocks in tonnes (ranges)	10 000-15 000	8 000-13 000	9 000-14 000	8 000-13 000
Stocks (index)	100	87	96	87

- (81) The level of stocks remained rather stable overall. It decreased by 13 % between 2003 and 2004, subsequently increased by nine percentage points until the end of 2005 and then decreased again by nine percentage points.

(e) *Investments and ability to raise capital*

	2003	2004	2005	IP
Investments (index)	100	369	177	62

- (82) Investments peaked in 2004 and 2005, when the production capacity of the Community industry was increased following the increasing demand on the market. During the investigation it was found that investments in buildings, plants and machinery in 2003 as well as during the IP were mainly to maintain the production capacity.

- (83) The investigation showed that the financial performance of the Community industry deteriorated but it did not reveal that its ability to raise capital was seriously affected yet during the period considered.

(f) *Profitability, return on investment and cash flow*

- (84) In view of very high and distorting extraordinary costs incurred by the main Community producer during the period considered, it was not considered reasonable to establish the profitability on the basis of the pre-tax net profit. These extraordinary costs were related to the change of ownership of the main Community producer in 2001. Therefore, the profitability of the Community industry was established by expressing the operating profit on the sales of the like product to unrelated customers as a percentage of the turnover of these sales.

	2003	2004	2005	IP
Profitability on EC sales (range)	7 %-17 %	3 %-13 %	2 %-12 %	(- 5 %)-(+5 %)
Profitability on EC sales (index)	100	38	29	8
Return on total investments (range)	(80 %)-(100 %)	(10 %)-(30 %)	(5 %)-(20 %)	(0 %)-(15 %)
Return on total investments (index)	100	17	12	4
Cash flow (index)	100	55	26	- 7

- (85) The decline in sales prices between 2003 and the IP significantly affected the profitability achieved by the Community industry. This profitability dropped by more than 10 percentage points during the period considered. The return on total investments was calculated by expressing the operating profit of the like product as a percentage of the net book value of fixed assets allocated to the like product. This indicator followed a similar trend as profitability, decreasing significantly over the period considered. With regard to the cash flow generated by the Community industry, a similar negative trend was found, resulting in a dramatic overall deterioration of the Community industry's financial situation in the IP.

(g) *Employment, productivity and wages*

	2003	2004	2005	IP
Number of employees (index)	100	100	97	96
Average labour cost per employee (index)	100	105	97	95
Productivity (index)	100	103	123	132

- (86) Due to serious efforts to cut costs, the number of personnel employed by the Community industry declined by 4 % since 2004. From 2003 to the IP, the Community industry managed to increase the productivity per employee by 32 %. During the same period the average labour cost per employee decreased by 5 %. It can therefore be concluded that, during the period considered, the Community industry made very significant progress in terms of cost efficiency.

(h) *Magnitude of the dumping margin*

- (87) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

(i) *Recovery from past dumping*

- (88) In the absence of any information on the existence of dumping prior to the situation assessed in the present proceeding, this issue is considered irrelevant.

(j) *Growth*

- (89) The investigation showed that during the period considered the Community industry increased its Community market share with 1 % to 2 %.

4.5. Conclusion on injury

- (90) Between 2003 and the IP, a number of injury indicators developed positively: the Community industry managed to increase its sales volumes and market share, and it invested significantly in additional production capacity.

- (91) However, its financial indicators developed dramatically: the reasonable profit margin achieved in 2003 decreased very rapidly and continuously as from 2004 to the end of the IP. Return of investment and cash flow situation developed exponentially negative. The reason for this development is that the steep increase in raw material prices could not be reflected in the sales prices of the like product. Whereas, in view of the increase of raw material prices, in a normal market situation an increase of the PVA sales price by 10 % to 20 % could have been expected, the sales prices of the like product produced by the Community industry decreased by 5 %, to the detriment of its profitability. Still, during the IP, the prices of the imports from the PRC undercut those of the Community industry, on a weighted average basis by 3,3 %.
- (92) In the light of the foregoing, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (93) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission has examined whether dumped imports of the product concerned originating in the PRC have caused injury to the Community industry to a degree that may be considered material. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effects of the dumped imports

- (94) Imports from the PRC were at significant levels during the period considered, i.e. constantly representing 10 % market share or more. At the same time, average prices of all exporting producers in the PRC decreased by 2 % and they undercut the average Community industry prices by 3,3 % in the IP. The Community industry, in order to assure its presence on its home market and due to the very low market prices set by imports from the PRC, felt obliged to decrease its sales prices by 5 % during the period considered.
- (95) Therefore, the effect of this unfair pricing behaviour of the dumped imports from the PRC was that the Community industry's prices were suppressed and that they could not cover the substantial increase of cost of raw materials. This was confirmed by the significant reduction in profitability by the Community industry.
- (96) Based on the above considerations, it was found that the low-priced imports from the PRC which significantly undercut the prices of the Community industry have had a determining role in the deterioration of the situation of the Community industry, which is reflected in the sharp decrease of profitability and strong deterioration of the other financial indicators.

5.3. Effects of other factors

(a) Imports originating in third countries other than the PRC

- (97) According to Eurostat and the information collected during the investigation, the main third countries from which PVA is imported are the USA, Japan and Taiwan.

Imports originating in other third countries (quantity)

Import (tonnes)	2003	2004	2005	IP
USA	11 313	21 207	22 919	22 638
Index (2003 = 100)	100	187	203	200
Japan	13 682	11 753	12 694	14 151
Index (2003 = 100)	100	86	93	103
Taiwan (ranges)	11 000-14 000	13 000-16 500	10 000-13 000	9 000-12 000
Index (2003 = 100)	100	118	88	83

Imports originating in other third countries (average price)

Average price (EUR)	2003	2004	2005	IP
USA	1 334	1 282	1 298	1 358
Index (2003 = 100)	100	96	97	102
Japan	1 916	1 532	1 846	1 934
Index (2003 = 100)	100	80	96	101
Taiwan	1 212	1 207	1 308	1 302
Index (2003 = 100)	100	100	108	108

Market shares

Market share (%)	2003	2004	2005	IP
USA	7,9 %	14,3 %	14,0 %	13,9 %
Japan	9,6 %	7,9 %	7,7 %	8,7 %
Taiwan (ranges)	100	113	77	73

(98) Imports from the USA have strongly increased since 2003 and during the IP they had amounted to more than 22 000 tonnes, accounting for almost 14 % of the total (captive and non-captive) Community market. The investigation showed that the bulk of these sales concerned sales between related parties and that the average unit prices of these transfer sales were, throughout the period considered, between 15 % and 20 % above the average cif prices of Chinese imports. Moreover, it was established that the quantities were resold to independent customers at prices 10 %-20 % higher than these aforementioned transfer import prices. As the market prices of PVA originating in the USA were consequently in the same ballpark as sales

prices of PVA produced by the Community industry, they did not play a role in the price depression observed during the period considered. It is therefore concluded that these imports did not have a significant effect on the situation of the Community industry.

(99) During the period considered there were also significant imports from Japan, accounting for almost 9 % of the Community market during the IP. After Japanese imports had dropped in 2004, they increased again as from 2005 and they were 3 % higher during the IP as compared to 2003. However, analysis of the sales prices of these

imports showed that the average import prices of these imports were above the prices that the Community industry could obtain and they therefore have not contributed to the negative price trend which led to the serious deterioration of the Community industry's situation.

(100) Imports from Taiwan are from one producer only which fully cooperated with the investigation. These figures were found to be more reliable than Eurostat data given that the CN code covers other products than the product concerned. They are for confidentiality reasons presented in indexes or ranges. Taiwanese imports, after a sharp increase in 2004, decreased gradually and accounted for 6 % to 7 % of the entire Community market during the IP (around half of the market share of imports from the PRC). During the same period, average prices of these imports increased by 8 % which is opposite to the price trend observed as regards imports from the PRC. Consequently, the price difference between PVA imported from the PRC and PVA imported from Taiwan increased from 12 % to 18 % during the IP. In view of these findings, it is provisionally concluded that these imports did not have a significant impact on the state of the Community industry.

(101) Further to the imports from the USA, Japan and Taiwan, there are no significant imports from other countries. On the basis of the findings with regard to these imports, as described under recitals 97 to 100, it can thus provisionally be concluded that imports other than from the PRC did not contribute to the material injury suffered by the Community industry.

(b) Eventual Community sales of other Community producers

(102) As stipulated in recitals 54 and 55, apart from the two producers comprising the Community industry, in the Community there are known to be four more companies producing the product concerned. Three of them, out of which two cooperated with the investigation as a user, consume all their own produced PVA in the manufacturing of downstream products. The fourth one is producing very limited quantities only. In view of the above, the other Community producers are deemed to have played no role in the price depression on the market and the subsequent injury suffered by the Community industry.

(c) Self-inflicted injury due to cost inefficiency

(103) Several interested parties claimed that any injury suffered by the Community industry was linked to the fact that the Community industry had not managed to stay cost competitive and that it had taken unreasonable

investment decisions. In this respect, as described under recital 86, the investigation has shown that the Community industry, during the period considered, has significantly increased its productivity, due to an increase in production output and a decrease in workforce. It was further established that the investments involved with the increase in production capacity (see recital 73) did not significantly influence the dramatically negative trend observed in the development of the financial position of the Community industry.

(104) The sole factor significantly affecting in a negative way the cost of production of the like product during the period considered, therefore, was the steep rise in the main raw material prices used for the production of the like product, as explained in recitals 78 and 79. The investigation showed that the development of the Community industry's purchase prices of VAM and energy was proportional to the development of these raw material prices on the global market and they therefore cannot be attributed to the way the Community industry purchased these. The argument is therefore dismissed.

(d) Time lag for price adjustment

(105) An important user of PVA submitted that it would be normal, for this particular sector, for the increase in VAM purchase price not to have yet led to an upward adjustment of the PVA sales price. This would be explained by the fact that long-term contracts are standard in the sector and, therefore, a significant time lag would be a normal phenomenon. In this respect, whilst it is recognised that certain sales of the Community industry are done via long-term agreements, it is not common that such agreements include a fixed price for a period of more than one year. Within these agreements, therefore, prices are renegotiated after a certain period or if raw material prices have changed significantly. Therefore, this argument is dismissed.

5.4. Conclusion on causation

(106) In conclusion, the above analysis has demonstrated that imports from the PRC during the period considered provoked a substantial price depression on the Community market throughout that period. During the IP, import prices from the PRC significantly undercut the Community industry prices.

(107) This price depression led to a considerable decrease in the sales prices of the Community industry, which in its turn coincided with a strong drop in the Community industry's profitability, its return on investments and its cash flow from operating activities.

(108) On the other hand, the examination of the other factors which could have injured the Community industry revealed that none of these could have had a significant negative impact.

(109) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is provisionally concluded that the dumped imports originating in the country concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

6. COMMUNITY INTEREST

(110) The Commission examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21 of the basic Regulation, the Commission considered the likely impact of measures for all parties concerned.

6.1. Interest of the Community industry

(111) As indicated in recital 56, the Community industry is composed of two companies, with production facilities in Germany and Spain, which employs in the range of 200 to 300 persons directly involved in the production, sales and administration of the like product. If measures are imposed, it is expected that the price depression on the Community market will come to an end and that sales prices of the Community industry will start to recover, as a consequence of which the financial situation of the Community industry will improve.

(112) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend in the development of the Community industry's financial indicators, and notably its profitability, will continue. The Community industry will then lose significant market share as it will no longer be able to follow the market prices set by imports from the PRC. At worst, the Community industry would be forced to step out of the free market and continue production of PVA for captive use only. In both cases, cuts in production and investments, closure of certain production capacities and job reductions in the Community will be a likely result.

(113) In conclusion, the imposition of anti-dumping measures would allow the Community industry to recover from the effects of injurious dumping found.

6.2. Interest of unrelated importers

(114) As described in recital 8, five sampled importers sent questionnaire replies and they accounted for around 80 % of Community imports of the product concerned during the IP. The information submitted by one of the sampled importers had to be disregarded at this stage as it cancelled twice an agreed verification visit. Three of the questionnaire replies were verified on the spot.

(115) The overall weight represented by PVA in the total turnover of these importers' activities was very small. On an average basis, 3 % to 4 % of these importers' activities could be linked to imports of PVA from the PRC. The importers have a much broader field of activities which can also include general trading and distribution. Certain importers purchase the product under investigation not only from the PRC but also from other sources in and outside the Community, including from the Community industry. The average profit margin attained by the sampled importers, on their trading of PVA, is around 5 %.

(116) Importers in the Community are not in favour of the imposition of measures. The cooperating importers argued that the imposition of measures would seriously harm their operations, as they would not be able to pass on the price increase to users. In this respect, the imposition of an anti-dumping duty on imports from the PRC, as explained in recital 111, will most likely lead to a slightly upwards correction of market prices. Therefore, it can be expected that importers which buy the product concerned from the PRC will be able to pass on these duty costs to the final customer. The significant undercutting still found after adjustment of the cif Community border prices for post-importation costs also suggests that there is room for a price increase. In any event, in view of the limited weight of sales of this product in the importers' activities, and the profit margin currently attained both overall and in view of their sales of PVA only, it is expected that the duty as provisionally established will not affect the financial situation of these economic operators to a significant extent.

(117) Although importers/distributors are not in favour of measures, it can be concluded on the basis of the information available that any advantage they may gain from not having anti-dumping measures imposed is outweighed by the interest of the Community industry in having the effect of unfair and injurious trading practices from the PRC neutralised.

6.3. Interest of users

- (118) Seven users filled in a users' questionnaire. The replies of two of these companies were incomplete and they therefore could not be included in the analysis. The five remaining companies were using PVA for a variety of applications: for the production of adhesives, the production of industrial powders, the production of PVB, textile sizing and finishing, and resin production.
- (119) Further to information on purchases reported in their responses to the questionnaires, the purchases during the IP of the five cooperating users represented about 19 % of total Community consumption of PVA and their Chinese imports represented about 22 % of total imports from the PRC. It is important to note that imports from the PRC represent, overall, the minor part of their purchases, i.e. 15 %. However, this picture is very mixed: one of the cooperating users did not import at all from the PRC during the IP whereas another cooperating user sourced its PVA exclusively from the PRC.
- (120) The cooperating users have raised a number of arguments against the imposition of duties.
- (121) Two companies used PVA for the production of adhesives. It was established that, for the production of such adhesives, PVA was a major cost input which, depending on the composition of the blend, could account for up to 80 % of the manufacturing cost. The companies argued that, in view of the significant weight of PVA in the production cost and the profit margins attained on the sales of adhesives, an anti-dumping duty might lead to bankruptcy or force them to relocate production outside the Community. These companies expressed very strong doubts as to whether their customers would be willing to pay an eventual price increase caused by duties. In this respect, whilst it is acknowledged that the profit margins achieved in this particular sector are modest, it should also be noted that the measures proposed are directly affecting purchase prices of PVA with Chinese origin only, which is one source of supply, and these prices significantly undercut the Community industry's prices during the investigation period. Therefore, the impact of the duty on these companies' production cost of adhesives is not insignificant but, also in view of the proposed duty level, there appear to be no reasons as to why their customers would not be willing to bear at least a good part of this cost increase.
- (122) Two other companies used PVA for the production of PVB. In the case of the production of PVB also, PVA is a major cost driver. One of these companies, which would subsequently use the PVB for the production of PVB film, suggested that eventual measures could trigger the company to move their production of PVB out of the Community. This company also submitted that, in view of the time it would take to qualify PVA for this application, it was complicated and burdensome for them to change supplier. The other PVB producer cooperating as a user, which used PVA not only for the production of PVB but mostly for the production of industrial powders, also pointed to the difficult and lengthy process of changing supplier and further expressed concerns about the increased costs that measures might result in.
- (123) It is acknowledged that an increase in the purchase cost of PVA will reflect in a higher manufacturing cost of PVB. At the same time, however, as imports from the PRC account for 13 % of the Community market, 87 % of the PVA consumed in the Community will not be directly affected by these measures. Moreover, the proposed duty rate is moderate. In view of the above and taking into account the good market conditions for PVB, the effect of such a duty is considered bearable.
- (124) As concerns the qualification procedure, it is recognised that, in particular applications, the characteristics of PVA can indeed be very demanding and tailor-made, resulting in a lengthy qualification process which includes intensive testing. However, it should be recalled that anti-dumping measures are not meant to deny certain suppliers access to the Community market. Any measure proposed is only meant to restore fair trade and correct a distorted market situation. Therefore, and even more in view of the level of the duty rate proposed, there is no reason why certain users would be obliged to change supplier once measures are put in place.
- (125) One cooperating user, a manufacturer of polyester/cotton and cotton fabrics, which used PVA in the sizing and finishing of greige fabrics, indicated that measures might force the company to shift its spinning and weaving activities outside the Community. In this respect, it was established that the cost share of PVA in this company's products manufacturing cost was rather limited, i.e. between 0,2 % and 0,8 %. In light of the duty rate proposed, it is therefore considered that the impact of such a duty is not significant.
- (126) Finally, the complainant, KEG, submitted that the non-imposition of measures would be against the interest of

users, as the poor financial results on its PVA activities might trigger KEG to step out of the merchant market and focus on the downstream markets. It argued that if that were to happen, the user industry would be short of supplies as KEG is a large and reliable supplier. Although this argument has not explicitly been supported by the users concerned, it is indeed confirmed that three of the five users concerned do purchase significant quantities of PVA from KEG and that this company can be considered as the most important supplier on the Community market. Therefore, if for whatever reason, KEG would step out of the market, it cannot be excluded that the user industry would be confronted with serious supply problems.

6.4. Conclusion on Community interest

- (127) The effects of the imposition of measures can be expected to enable the Community industry to improve its profitability. In view of the unfavourable financial situation of the Community industry, there is a real risk that, in the absence of measures, the Community industry may close down production facilities and lay off workforce. In general, the users in the Community would also benefit from the imposition of measures, as the supply of sufficient volumes of PVA will not be jeopardised whilst the overall increase in purchase price of PVA will be moderate. In light of the above, it is provisionally concluded that no compelling reasons exist for not imposing measures in the present case on Community interest grounds.

7. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

- (128) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed on imports of the product concerned originating in the PRC in order to prevent further injury to the Community industry by the dumped imports.
- (129) As far as imports of the product concerned originating in Taiwan are concerned, no dumping was provisionally found, as indicated at recital 30 above. Consequently, no provisional measures should be imposed. In view of the timing of this determination, it was considered appropriate to give a period of one month to interested parties to comment on this provisional finding, with a view to possibly terminating the proceeding in respect of imports of the product concerned originating in Taiwan thereafter.

7.1. Injury elimination level

- (130) The provisional measures on imports originating in the PRC should be imposed at a level sufficient to eliminate

the injurious effect caused to the Community industry by the dumped imports, without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

- (131) It is considered that in 2003 there was a normal competitive situation on the Community market where the Community industry, in the absence of injurious dumping, made a normal profit within the range as described in recital 84 above. Consequently, on the basis of the information available, it was preliminarily found that a profit margin corresponding to that level could be regarded as an appropriate level which the Community industry could be expected to obtain in the absence of injurious dumping.
- (132) The required price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price was obtained by adjusting the sales price of each Community industry producer to a break-even point and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. Given that none of the cooperating Chinese producers was granted MET or IT, and in view of the high level of cooperation, the provisional single countrywide injury elimination level was calculated as a weighted average of the injury margins of all three cooperating Chinese exporting producers.

- (133) The injury margin thus established for the PRC was significantly higher than the dumping margin found.

7.2. Provisional measures

- (134) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed on imports of the product concerned originating in the PRC at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule.
- (135) On the basis of the above, the proposed duty rate for the product concerned originating in the PRC is 10,0 %.

7.3. Final provision

(136) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on certain polyvinyl alcohols in the form of homopolymer resins with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol % falling within CN code ex 3905 30 00 (TARIC code 3905 30 00 20) and originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 shall be 10 %.

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 1 of this Regulation shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 September 2007.

For the Commission

Peter MANDELSON

Member of the Commission
